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House Engrossed

State of Arizona
House of Representatives
Forty-sixth Legislature
Second Regular Session
2004

HOUSE BILL 2399

AN ACT

AMENDING SECTIONS 23-1043.02 AND 23-1043.03, ARIZONA REVISED STATUTES;
RELATING TO WORKERS' COMPENSATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 23-1043.02, Arizona Revised Statutes, is amended to
3 read:

4 23-1043.02. Human immunodeficiency virus; establishing
5 exposure; definition

6 A. EXCEPT AS PROVIDED IN SUBSECTION C OF THIS SECTION, a claim for a
7 condition, infection, disease or disability involving or related to the human
8 immunodeficiency virus or acquired immune deficiency syndrome shall ~~include~~
9 ~~the occurrence of a significant exposure as defined in this section and,~~
10 ~~except as provided in subsection B of this section, shall be processed and~~
11 ~~determined under the provisions of this chapter and applicable principles of~~
12 ~~law~~ BE PROCESSED AND DETERMINED UNDER THIS CHAPTER AND APPLICABLE PRINCIPLES
13 OF LAW.

14 B. A SIGNIFICANT EXPOSURE THAT ARISES OUT OF AND IN THE COURSE OF
15 EMPLOYMENT SHALL CONSTITUTE AN INJURY BY ACCIDENT FOR WHICH A WORKERS'
16 COMPENSATION CLAIM MAY BE FILED. A CLAIM FOR A SIGNIFICANT EXPOSURE SHALL BE
17 PROCESSED AND DETERMINED UNDER THIS CHAPTER AND APPLICABLE PRINCIPLES OF LAW.

18 ~~B.~~ C. Notwithstanding any other law, an employee who satisfies the
19 following conditions presents a prima facie claim for a condition, infection,
20 disease or disability involving or related to the human immunodeficiency
21 virus or acquired immune deficiency syndrome if the medical evidence shows to
22 a reasonable degree of medical probability that the employee sustained a
23 significant exposure within the meaning of this section:

24 1. The employee's regular course of employment involves handling or
25 exposure to blood or body fluids, other than tears, saliva or perspiration,
26 including health care providers as defined in ~~title 36, chapter 6, article 4~~
27 SECTION 36-661, forensic laboratory workers, fire fighters, law enforcement
28 officers, emergency medical technicians, paramedics and correctional
29 officers.

30 2. Within ten calendar days after a possible significant exposure
31 which arises out of and in the course of his employment, the employee reports
32 in writing to the employer the details of the exposure. The employer shall
33 notify its insurance carrier or claims processor of the report. Failure of
34 the employer to notify the insurance carrier is not a defense to a claim by
35 the employee.

36 3. The employee has blood drawn within ten days after the possible
37 significant exposure, the blood is tested for the human immunodeficiency
38 virus by antibody testing within thirty days after the exposure and the test
39 results are negative.

40 4. The employee is tested or diagnosed, according to clinical
41 standards established by the centers for disease control of the United States
42 public health service, as positive for the presence of the human
43 immunodeficiency virus within eighteen months after the date of the possible
44 significant exposure.

1 ~~C.~~ D. On presentation or showing of a prima facie claim under this
2 section, the employer may produce specific, relevant and probative evidence
3 to dispute the underlying facts, to contest whether the exposure was
4 significant as defined in this section, or to establish an alternative
5 significant exposure involving the presence of the human immunodeficiency
6 virus.

7 ~~D.~~ E. A person alleged to be a source of a significant exposure shall
8 not be compelled by subpoena or other court order to release confidential
9 human immunodeficiency virus related information either by document or by
10 oral testimony. Evidence of the alleged source's human immunodeficiency
11 virus status may be introduced by either party if the alleged source
12 knowingly and willingly consents to the release of that information.

13 ~~E.~~ F. Notwithstanding title 36, chapter 6, article 4, medical
14 information regarding the employee obtained by a physician or surgeon is
15 subject to the provisions of section 23-908, subsection C.

16 ~~F.~~ G. The commission by rule shall prescribe requirements and forms
17 regarding employee notification of the requirements of this section and the
18 proper documentation of a significant exposure.

19 ~~G.~~ H. For the purposes of this section, "significant exposure" means
20 contact of an employee's ruptured or broken skin or mucous membrane with a
21 person's blood or body fluids, other than tears, saliva or perspiration, of a
22 magnitude that the centers for disease control have epidemiologically
23 demonstrated can result in transmission of the human immunodeficiency
24 virus. For purposes of filing a claim under this section, significant
25 exposure does not include sexual activity or illegal drug use.

26 Sec. 2. Section 23-1043.03, Arizona Revised Statutes, is amended to
27 read:

28 23-1043.03. Hepatitis C; establishing exposure; definition

29 A. EXCEPT AS PROVIDED IN SUBSECTION C OF THIS SECTION, a claim for a
30 condition, infection, disease or disability involving or related to hepatitis
31 C shall ~~include the occurrence of a significant exposure as defined in this~~
32 ~~section and, except as provided in subsection B of this section, shall be~~
33 ~~processed and determined under this chapter and applicable principles of law~~
34 BE PROCESSED AND DETERMINED UNDER THIS CHAPTER AND APPLICABLE PRINCIPLES OF
35 LAW.

36 B. A SIGNIFICANT EXPOSURE THAT ARISES OUT OF AND IN THE COURSE OF
37 EMPLOYMENT SHALL CONSTITUTE AN INJURY BY ACCIDENT FOR WHICH A WORKERS'
38 COMPENSATION CLAIM MAY BE FILED. A CLAIM FOR A SIGNIFICANT EXPOSURE SHALL BE
39 PROCESSED AND DETERMINED UNDER THIS CHAPTER AND APPLICABLE PRINCIPLES OF LAW.

40 ~~B.~~ C. Notwithstanding any other law, an employee who satisfies the
41 following conditions presents a prima facie claim for a condition, infection,
42 disease or disability involving or related to hepatitis C if the medical
43 evidence shows to a reasonable degree of medical probability that the
44 employee sustained a significant exposure within the meaning of this section:

1 1. The employee's regular course of employment involves handling of or
2 exposure to blood or body fluids, other than tears, saliva or perspiration,
3 including health care providers as defined in section 36-661, forensic
4 laboratory workers, fire fighters, law enforcement officers, emergency
5 medical technicians, paramedics and correctional officers.

6 2. Within ten calendar days after a possible significant exposure that
7 arises out of and in the course of his employment, the employee reports in
8 writing to the employer the details of the exposure. The employer shall
9 notify its insurance carrier or claims processor of the report. Failure of
10 the employer to notify the insurance carrier is not a defense to a claim by
11 the employee.

12 3. The employee has blood drawn within ten days after the possible
13 significant exposure, the blood is tested for hepatitis C by antibody testing
14 within thirty days after the exposure and the test results are negative.

15 4. The employee is tested or diagnosed, according to clinical
16 standards established by the centers for disease control of the United States
17 public health service, as positive for the presence of hepatitis C within
18 seven months after the date of the possible significant exposure.

19 ~~G.~~ D. On presentation or showing of a prima facie claim under this
20 section, the employer may produce specific, relevant and probative evidence
21 to dispute the underlying facts, to contest whether the exposure was
22 significant as defined in this section, or to establish an alternative
23 significant exposure involving the presence of hepatitis C.

24 ~~D.~~ E. A person alleged to be a source of a significant exposure shall
25 not be compelled by subpoena or other court order to release confidential
26 hepatitis C related information either by document or by oral
27 testimony. Evidence of the alleged source's hepatitis C status may be
28 introduced by either party if the alleged source knowingly and willingly
29 consents to the release of that information.

30 ~~E.~~ F. Notwithstanding title 36, chapter 6, article 4, medical
31 information regarding the employee obtained by a physician or surgeon is
32 subject to section 23-908, subsection C.

33 ~~F.~~ G. The commission by rule shall prescribe requirements and forms
34 regarding employee notification of the requirements of this section and the
35 proper documentation of a significant exposure.

36 ~~G.~~ H. For the purposes of this section, "significant exposure" means
37 contact of an employee's ruptured or broken skin or mucous membrane or other
38 significant unbroken surface area with a person's blood or body fluids, other
39 than tears, saliva or perspiration, of a magnitude that the centers for
40 disease control have epidemiologically demonstrated can result in
41 transmission of hepatitis C. For purposes of filing a claim under this
42 section, significant exposure does not include sexual activity or illegal
43 drug use.